

AFRICAN UNION

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**EXECUTIVE COUNCIL**

**Seventh Ordinary Session**

**28 June – 2 July 2005**

**Tripoli, Libya**

**EX.CL/189 (VII) REV.2**

**REPORT OF THE MEETING OF AFRICAN MINISTERS**  
**RESPONSIBLE FOR AIR TRANSPORT**

**REPORT OF THE MEETING OF AFRICAN MINISTERS  
RESPONSIBLE FOR AIR TRANSPORT, 16-19 MAY 2005  
SUN CITY, SOUTH AFRICA**

**INTRODUCTION**

The Commission in collaboration with the Department of Transport of the Republic of South African organised a four days Meeting of African Ministers responsible for Air Transport which was held in Sun City, South Africa from 16 to 19 May 2005. The meeting was convened in response to the mounting global challenges to air transport with adverse impact to the ongoing efforts to strengthening Africa's ailing air transport sector. In particular, inefficiency, high cost of air travel and market restrictions within the continent and between Africa and major destinations in Europe and North America have been issues of great concern to African countries and the African Union.

The Sun City Ministerial meeting was held in two sessions. The sector experts met from 16 to 17 followed by the Ministerial session from 18 to 19 May 2005. His Excellency Thabo MBEKI, President of the Republic of South Africa opened the Ministerial segment and gave a keynote address.

The meeting made extensive consideration of the key current issues of the sector and made specific decisions on required action. Given the crucial importance of the Yamoussoukro Decision to the development of the air transport industry in Africa, the sector Ministers adopted a resolution including a plan of action aimed at accelerating its implementation.

**DELIBERATIONS OF THE MEETING**

The meeting was attended by thirty one Member States of the African Union and eleven Regional Economic Communities and international organisations of the air transport sector.

The following bureau was elected to take charge of the meeting work:

Chairperson	South Africa
1 <sup>st</sup> Vice Chair	Nigeria
2 <sup>nd</sup> Vice Chair	Algeria
3 <sup>rd</sup> Vice Chair	Burundi
Rapporteur	Uganda

**OVERVIEW OF THE STATE OF AIR TRANSPORT IN AFRICA**

The meeting discussed shortcomings of the African air transport industry including, among others, restricted nature of the markets, high operating costs, under-capitalization, excessive state involvement, lack of technical and professional capacities, low level of inter-airline cooperation and inaccessibility to major world alliance. Delegates proposed a number of possible solutions to the various problems of the sector and agreed to place emphasis on the need to speed up implementation of continental and global initiatives including the following:

- Establishing a framework for co-operation in air transport;
- Opening up Au Member States markets all African airline companies;
- Building sufficient capacity to enhance the ability to implement the Yamoussoukro Decision for the liberalization of air transport services in Africa;
- Adopting a common external air transport negotiating position;
- Making use of technological advances in the industry, such as e-ticketing in order to remain competitive;
- Strengthening the coordination role of the African Union in matters of air transport.

#### **AIR TRANSPORT POLICY ISSUES**

##### **a) Implementation of the Yamoussoukro Decision**

The meeting considered the Report of the 4th Meeting of the Monitoring Body of the Yamoussoukro Decision and a Synoptic Analysis of the Yamoussoukro Decision on the liberalisation of air transport markets in Africa both of which led to the conclusion that implementation of the Yamoussoukro decision was proceeding at a rather dismal pace and that there are, apparently, many issues that need further elaboration and clarification in order to enable Member States and the regional economic communities to effectively take the necessary measures to implement the Decision as earlier envisaged.

Following a long debate on the way forward, the Ministers adopted a resolution committing them to a plan of action for speeding up implementation of the Yamoussoukro Decision. The Ministerial Resolution is submitted for endorsement together with this report.

##### **b) Competition Rules**

A presentation was made on Competition Regulations jointly elaborated and adopted by COMESA, EAC and SADC for liberalised air services in Eastern and Southern Africa. It was duly noted that this was part of the regional undertaking to fast track the implementation of the Yamoussoukro Decision. Also, information was provided on the elaboration of competition rules and strategies for effective implementation of the Yamoussoukro Decision in West Africa and Central Africa.

The meeting was impressed by regional efforts to create appropriate environment for the liberalization of air transport markets and took the following decisions:

- The African Union in collaboration with AFCAC and AFRAA should endeavour to prepare and disseminate Rules of Competition for Africa as soon as possible;

- Cooperation in the elaboration of policies and regulations should be strengthened so as to have harmonised policies and a continental legislative organ to manage the air transport sector;
- Clear mechanisms for funding the Monitoring Body should be established.

### **c) Common External Air Transport Policy**

The adoption of a common African air transport policy or common air services negotiating position has become more of a necessity due to concerns on the implications on African carriers of the new European Union external air transport policy on one side and on the US Open Skies Policy on the other side. Both the EU and the US have been negotiating bilateral air service agreements as single blocks with individual African countries to the disadvantage of carriers in this continent.

In that regard, a draft document on Common African Position Relating to EU Community Clause and Negotiating Mandate prepared by a group of experts under the auspices of AFCAC and AFRAA was presented to the meeting for consideration and adoption.

In discussing the item, delegates were concerned about adopting a common African position due to a number issues, including the following:

- Lack of implementation of the Yamoussoukro Decision which has a bearing on the adoption of a common position to external parties;
- The need for some countries to undertake extensive internal consultation particularly regarding the implications on their tourism industries;
- The need for clear guidance for some countries concerning the bilateral service agreements they have already entered without due consideration to the provision of the draft common position;
- The possibility of block-to-block negotiations between some RECs and the EU Commission.

It was finally decided to carry out a two-phased plan of action on the activity as follows:

#### **Phase I: Preparation of Interim Guidelines**

Preparation of Interim Guidelines for negotiating with external parties was considered a matter of urgency. To that end, it was decided to establish a Working Group to composed of the African Union, RECs, AFCAC, AFRAA and Ethiopia to prepare the Interim Guidelines document by 11 June 2005. The Working Group met at the headquarters of the African Union from 6 to 9 June 2005 to prepare the required document.

The document was subsequently submitted to the Monitoring Body of the Yamoussoukro Decision which met on 10 June 2005 at the same venue to consider and approve the draft Interim Guidelines.

## **Phase II: Elaboration and adoption of a Common External Air Transport Policy**

This phase was regarded as a longer process that would be facilitated by the Commission under the guidance of the Ministers responsible for air transport. It was agreed that this work should commence during the second half of year 2005 and its outcome submitted to the next meeting of the Ministers for adoption.

### **AIR SAFETY AND SECURITY**

The meeting considered and adopted the recommendations of the Report of the African Safety Summit Meeting presented by the Secretary of the Air Safety Enhancement Team (ASET) which took place in Nairobi Kenya in February 2005.

The meeting reaffirmed that safety and security are prerequisites for a full and safe implementation of the Yamoussoukro Decision. In particular, the Meeting Urged African States to commit themselves to ensuring a progressively more safe and secure environment to Air Transport by bringing down the accident rate in Africa to the worldwide average level by 2008.

### **INSTITUTIONAL MATTERS**

Under this item, the meeting discussed the future of the African Civil Aviation Commission (AFCAC) which has, for years, been financially dependent on the International Civil Aviation Organisation (ICAO) for most of its administrative expenses and programme activities. It was also brought to light that ICAO would not renew its agreement with AFCAC for comprehensive support by the end of 2006 and there was, therefore, the need to take measures to ensure the organisation becomes financially independent as soon as possible.

The meeting acknowledged that financial problems of AFCAC are impeding this Commission to implement its work programme and to fulfil its mission and that it was long overdue for Member States to live up to their obligations of financially sustaining AFCAC. To this end, it was decided to Urge the Member States concerned to take appropriate action to urgently pay their full contribution for 2005 as well as the arrears.

Also, the meeting took note that AFCAC Autonomy should start on 1 January 2007 and, in this connection, an Extraordinary Plenary Session will be held at the AU Commission Headquarters in Addis Ababa, from 8 to 9 September 2005.

### **TAXATION ON AIR TICKETS FOR GENERAL REVENUE PURPOSES**

The meeting was informed about a Resolution adopted by the Economic, Social and Cultural Council (ECOSOCC) of the African Union concerning levying of a US\$ 5 fee on each air ticket for intra-African flights in order to raise funds for the Commission of the African union. Following a long debate, the Ministers decided to affirm the industry position which is against any imposition of taxes that would add to

the cost of air transport and would drain away the income of the sector towards other activities.

## **RECOMMENDATIONS**

In view of the critical importance of the various issues considered and the decisions taken by the Ministers responsible for air transport, the Executive Council is invited to:

- Take note of the report of the Meeting of the African Ministers responsible for air transport;
- Commend the Ministers responsible for air transport for their candid assessment of the air transport sector in Africa and adopting a comprehensive plan of action to bring about radical change to the sector with a view to enhancing its contribution to the socio-economic development of Africa;
- Endorse the Resolution of the Ministers responsible for air transport on the Follow-Up of the Implementation of the Yamoussoukro Decision;
- Request the Commission, in collaboration with UNECA, AFCAC, AFRAA and the RECs, to prepare a Common African External Air Transport Policy.
- Urge Member States to meet their financial obligations by urgently paying their full contributions for 2005 as well as the arrears in order to sustain AFCAC and enhance its autonomy; and
- Request the Chairperson of the Commission to submit a progress report on the implementation of these recommendations to the next session of the Executive Council.

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**EX.CL/189 (VII)**  
**Annex I**

**REPORT OF THE MEETING OF AFRICAN MINISTERS  
RESPONSIBLE FOR AIR TRANSPORT**

## **I. INTRODUCTION**

1. The Ministerial Session of the Meeting of African Ministers responsible for air transport was held on the 18<sup>th</sup> and 19<sup>th</sup> of May 2005 at the Sun City Resort Centre in South Africa. This was the first session taking place under the auspices of the African Union with the patronage of the Government of South Africa, the host country. It was preceded by a preparatory session of air transport experts from 16 to 17 May 2005 at the same venue. The theme of the meeting was: ***“Towards an Efficient and Affordable Air Transport System in Africa”***.

2. The sector experts had deliberated extensively on the key current issues of the sector including the implementation of the Yamoussoukro Decision and proposed common African air transport policy regarding relations with external parties focusing on Europe and North America. Matters of air transport safety and need to make the African Civil Aviation Commission (AFCAC) autonomous were also discussed.

3. In each area, the experts made specific recommendations on required action. Given the crucial importance of the Yamoussoukro Decision to the development of the air transport industry in Africa, the experts proposed and drafted a Ministerial resolution aimed at accelerating its implementation. The report of the experts containing their recommendations and the draft resolution were submitted for the consideration and adoption by the Ministers.

## **II. PARTICIPANTS**

4. The meeting was attended by Ministers responsible for air transport, senior government officials, diplomats, airline executives, civil aviation administrators and other industry stakeholders from the following Member States: Angola, Algeria, Botswana, Burundi, Cameroon, Chad, Cote d'Ivoire, Djibouti, DRC, Egypt, Ethiopia, Gabon, Ghana, Kenya, Lesotho, Libya, Madagascar, Malawi, Mozambique, Namibia, Nigeria, Niger, South Africa, Senegal, Swaziland, Sudan, Tanzania, Uganda, Zambia, Zimbabwe.

5. Beside Member States and the Commission of the African Union, the following organisations were represented at the meeting: the Common Market for Eastern and Southern Africa (COMESA), the Southern Africa Development Community (SADC), the West African Economic and Monetary Union (UEMOA), the New Partnership for Africa's Development (NEPAD), the African Civil Aviation Commission (AFCAC), the African Airlines Association (AFRAA), the Airlines Association of Southern Africa (AASA), the United Nations Economic Commission for Africa (UNECA) the Foundation for Democracy in Africa (FDA), the International Civil Aviation Organisation (ICAO) and the International Air Transport Association (IATA).

## **III. OPENING CEREMONY**

6. The opening ceremony was graced by His Excellency Thabo Mbeki, President of the Republic of South Africa who made the opening Address. Honourable Jeff T. Radebe, Minister of Transport of South Africa presided over the opening ceremony whereby he welcomed the attending Ministers and other distinguished delegates and gave a brief outline of the objectives of the meeting. The following speakers also



addressed the meeting ahead of President MBEKI: Dr. Bernard ZOBA, Commissioner for Infrastructure and Energy of the African Union and Mr. Tshepo Peege, Chairman of the African Civil Aviation Commission (AFCAC).

**Speech of Mr. Tshepo PEEGE the Chairman of AFCAC**

7. The speech of the Chairman of AFCAC sought to underscore the relevance and importance of AFCAC as a collective mechanism for promoting and defending Africa's interests in civil aviation. To that effect, he outlined the main objectives and functions of AFCAC. Finally, he appealed to Member States to fully support the organisation by honouring their financial obligations to enable AFCAC build the necessary capacity for carrying out its mandate in civil aviation.

**Speech of Dr. Bernard ZOBA, Commissioner for Infrastructure and Energy of the African Union**

8. The Commissioner launched his address by a customary expression of gratitude to His Excellency President Mbeki for bestowing the meeting with a great honour by his personal attendance and opening address. He also thanked the Government of the Republic of South Africa for hosting and providing material and technical support in the organization of the meeting. He also thanked all participants for accepting the invitation to attend and make the meeting a success.

9. Recalling the Ministerial meeting on transport and the Millennium Development goals (MDGs) held in Addis Ababa in April 2005, the Commissioner underscored the role of air transport in socio-economic development and integration of Africa. In this connection, he also referred to the meeting of the Working Group on Mastering the African Sky convened at the behest for His Excellency Prof. Alpha Oumar KONARE, Chairperson of the Commission of the African Union in March 2004.

10. He mentioned that the chairperson was particularly concerned with future of the African air transport industry given its inadequacy, inefficiency and high cost of services. He had, therefore, tasked the Working Group to come up with a strategy for strengthening the African air transport industry with a view to enhancing its efficiency, affordability and global competitiveness.

11. The Commissioner proceeded to enumerate the various challenges facing air transport in Africa and measures that could be taken to improve its state and performance. In that context, he advocated for a speedy implementation of the Yamoussoukro Decision for the liberalisation and integration of air transport services in Africa. He, as well, called for the adoption of a common external air transport policy to ensure Africa's interests are taken into account in intercontinental markets. He ended by appealing for enhanced cooperation among the Member States in ensuring overall strengthening of air transport in the continent

**Opening Speech of His Excellency Thabo MBEKI President of the Republic of South Africa**

12. The President expressed his pleasure at the opportunity to address the Ministers and other air transport stakeholders on key challenges facing the sector in the continent. He stressed the importance of an efficient air transport system in the building up of a strong united Africa. He went on to give an illustrative background of the development of air transport from the early years of experimentation, adventure and war machines to the years when the mode entered the mainstream of public means of transport.

13. He briefly touched on the poor state of the sector in Africa referring to particularly its high degree of inefficiency and unreliability. He pointed out some major challenges including rising fuel and labour costs as well inappropriate policies allowing unchecked monopolies in the running of airports, air navigation services and airlines all of which contribute to the high cost of air travel in Africa. He quoted established findings indicating the enormous potential of air transport in boosting economic growth quantitatively if appropriate measures are taken to mitigate the shortcomings and enhance its performance.

14. President MBEKI spoke at large on the various strategies critical to the strengthening of air transport in Africa with particular regard to market, institutional, infrastructure and regulatory measures.

**IV. ELECTION OF THE BUREAU**

15. The meeting elected the following Bureau:

Chairman	:	South Africa
1 <sup>st</sup> Vice Chairman	:	Nigeria
2 <sup>nd</sup> Vice Chairman	:	Algeria
3 <sup>rd</sup> Vice Chairman	:	Burundi
Rapporteur	:	Uganda

**V. ADOPTION OF THE AGENDA**

16. The following agenda was adopted:

**I. OPENING CEREMONY**

**II. WORKING SESSION**

1. Election of the Bureau
2. Adoption of the Agenda and Work Programme
3. Consideration of the Report of Experts

4. Consideration and adoption of the Draft Resolution on the Follow-up on the Implementation of the Yamoussoukro Decision
5. Any Other Business

### **III. CLOSING**

### **VI. ORGANIZATION OF WORK**

17. The meeting adopted the following working hours:

Morning	:	09:00	-	13:00hrs
Afternoon	:	15:00	-	19:00hrs

### **VII. AGENDA ITEM 3: CONSIDERATION OF THE REPORT OF EXPERTS**

#### **A. PRESENTATION OF THE REPORT OF EXPERTS**

18. The Chairperson of the experts meeting presented the report of the experts' session briefly recounting the discussions and recommendations for each agenda item. She informed the Ministers that the experts discussed the following main agenda items:

- 1) Overview of the state of air transport in Africa
- 2) Air transport policy issues:
  - Implementation of the Yamoussoukro Decision
  - Competition Rules
  - Common African External Air Transport Negotiating Position
- 3) Air safety and security
- 4) Institutional matters: Autonomy of the African Civil Aviation Commission (AFCAC)

#### **i. Overview of the State of Air Transport in Africa**

19. The experts discussed shortcomings of the African air transport industry including, among others, restricted nature of the markets, high operating costs, under-capitalization, excessive state involvement, lack of technical and professional capacities, low level of inter-airline cooperation and inaccessibility to major world alliance. Delegates proposed a number of possible solutions to the various problems of the sector and agreed to place emphasis on the need to speed up implementation of continental and global initiatives including the following:

- Establishing a strong framework for co-operation in air transport;
- Opening up local markets to airlines of other African countries;
- Building sufficient capacity to enhance the ability to implement the Yamoussoukro Decision for the liberalization of air transport services in Africa;
- Adopting a common external air transport negotiating position;

- Making use of technological advances in the industry, such as e-ticketing in order to remain competitive;
- Strengthening the coordination role of the African Union in matters of air transport.

**ii. Air transport policy issues**

**Implementation of the Yamoussoukro Decision**

20. The meeting considered the Report of the 4th Meeting of the Monitoring Body of the Yamoussoukro Decision and a Synoptic Analysis of the Yamoussoukro Decision on the liberalisation of air transport markets in Africa. Both reports concluded that there was very slow progress in the implementation of the Decision.

21. The experts decided to prepare a plan of action and resolution to be adopted the Ministers committing the Member States to a speedy implementation of the Yamoussoukro Decision.

**Competition Rules**

22. Consideration was made of the experience of Eastern and Southern Africa regions in the development and implementation of Competition Regulations jointly elaborated and adopted by COMESA, EAC and SADC for liberalised air services. Also, the experience of harmonization of competition rules and strategies for effective implementation of the Yamoussoukro Decision in West Africa and Central Africa was considered. In that regard, the experts made the following recommendations:

- The African Union in collaboration with AFCAC and AFRAA should endeavour to prepare and disseminate Rules of Competition for Africa as soon as possible;
- Policy development and rulemaking should be undertaken concurrently in order to ensure the existence of both harmonized policies and a unified body of laws to effectively govern the sector;
- Clear mechanisms for funding the Monitoring Body should be established.

**Common External Air Transport Policy**

23. Under this item, a draft document on Common African Position Relating to EU Community Clause and Negotiating Mandate prepared by a group of experts under the auspices of AFCAC and AFRAA was presented to the meeting. It was explained that a common negotiating position for air service agreements was essential in order to ensure fairness to African carriers when dealing particularly with the European Union, which negotiates as a single market, as well as the Open Skies Policy of the US.

24. Due to the need for more consultations and preparations at national level, the experts recommended a two-phased plan of action for this undertaking as follows:

**Phase I: Preparation of Interim Guidelines**

25. It was agreed to form a working group composed of the African Union, RECs, AFCAC, AFRAA and Ethiopia to prepare the Interim Guidelines document by 11 June 2005 ready for submitting it to the AU Summit of July 2005.

**Phase II: Elaboration and adoption of a Common External Air Transport Policy**

26. It was agreed that this work should commence during the second half of year 2005 under the coordination of the African Union and the guidance of the Ministers responsible for air transport. Its outcome would be submitted to the next meeting of the Ministers for adoption.

**iii. Air safety and security**

27. The experts considered and adopted the recommendations of the Report of the African Safety Summit Meeting presented by the Secretary of the Air Safety Enhancement Team (ASET) which took place in Nairobi Kenya in February 2005.

28. They reaffirmed that safety and security are prerequisites for a full and safe implementation of the Yamoussoukro Decision. They recommended that African States should be urged to commit themselves to ensuring a progressively more safe and secure environment to Air Transport by bringing down the accident rate in Africa to the worldwide average level by 2008.

**iv. Institutional Matters**

29. Under this item, the meeting was informed that the financial support that AFCAC gets from the International Civil Aviation Organisation (ICAO) would end by the end of 2006 after which the organisation is expected to become financially independent. Further information was provided about a planned Extraordinary Plenary Session scheduled to be held at the AU Commission Headquarters in Addis Ababa, from 8 to 9 September 2005 to discuss the issue of AFCAC autonomy.

30. The experts acknowledged that financial problems of AFCAC are impeding the organisation to implement its work programme and to fulfill its mission and, in that regard, recommended that Member States should be urged to urgently pay their full contribution for 2005 as well as the arrears.

**v. Taxation on Air Tickets for General Revenue Purposes**

31. The meeting was informed about a Resolution adopted by the Economic, Social and Cultural Council (ECOSOCC) of the African Union concerning levying of a US\$ 5 fee on each air ticket for intra-African flights in order to raise funds for the Commission of the African Union.

32. The experts recommended that the sector Ministers be requested to affirm the industry position which is against any imposition of taxes that would add to the cost

of air transport and would drain away the income of the sector towards other activities.

**vi. The Way Forward/Plan of Action**

33. The experts elaborated an action plan for speeding up the implementation of the Yamoussoukro Decision and drafted a Ministerial Resolution, which includes the Plan of Action, for the consideration and adoption by the Ministers.

**B. DELIBERATIONS ON THE REPORT OF THE EXPERTS SESSION**

34. The Ministers commended the experts for their exhaustive work and quality of their report. They were impressed by the due attention placed on the crucial issues of the sector and particularly the implementation of the Yamoussoukro Decision. They sought clarification on some areas after which they endorsed the report and its recommendations.

**VIII. AGENDA ITEM 4: CONSIDERATION AND ADOPTION OF THE DRAFT  
RESOLUTION ON THE FOLLOW-UP OF THE IMPLEMENTATION OF THE  
YAMOUSSOUKRO DECISION**

35. The Ministers held a long and comprehensive debate on the draft resolution. Some were interested in getting at the root-cause of the apparent failure and/or reluctance by some Member States to implement the Decision and, hence, come up with a more flexible plan of action that would accommodate the concerns of all states. Others were concerned about the dangers of undermining the legal foundations of the Decision, thus, minimising its effectiveness in the quest for a more accommodating framework. In particular, it was explained that a number of countries were already forging ahead in implementing the Decision and that it would be unwise to take any revision of the timeframe as it would amount to demoralisation to such countries and even breed laxity to the others.

36. There was also discussion on the possibility of allowing a two-track approach whereby those states in which implementation was already on course should continue while others are allowed to implement the Decision at their own (slower) pace. In this case, it was argued that the issue of time frame would not be so much of a problem since the deadline of 2002 had already passed with most countries in default.

37. In the end, the Ministers concluded their discussion by agreeing to work towards a more positive and optimistic approach taking into account the need to enhance solidarity among the Member States. In that context, they decided that a comprehensive evaluation of the implementation of the Decision be undertaken. Also, the outstanding elements like strengthening of the Monitoring Body, establishment of an executive agency, elaboration of competition rules and dispute resolution mechanism and capacity building in all the relevant institutions including the African Union should be vigorously undertaken.

38. All through their deliberations on this item, the Ministers thoroughly examined each clause of the draft resolution to ensure that their specific views as well as the spirit of their discussions were clearly reflected in the resolution. They finally adopted the resolution after the necessary improvements had been incorporated to their satisfaction.

**IX. ANY OTHER BUSINESS**

39. The Ministers discussed the need to regularise their meetings especially given the need to have a close monitoring and follow-up of critical policy issues including, inter alia, the implementation of the Yamoussoukro Decision, the common external air transport policy as well as matters of safety, security and environmental protection. They agreed to have an ordinary meeting at least once every two years (biennially).

**X. CLOSING**

40. The Chairman of the Ministers session thanked the Ministers for their candid and robust participation in the deliberations of the meeting. He commended their commitment to ensuring the development of a strong air transport sector in Africa as reflected in the seriousness of their interventions during the meeting. He qualified the meeting as a definite success and a good beginning for Africa in its endeavour to develop its air transport industry under the leadership of the African Union and within the context of the NEPAD framework.

41. The vote of thanks was delivered by Honourable Mallam Isa Yuguda, Minister of Aviation of the Federal Republic of Nigeria. Speaking on behalf of other delegates, the honourable Minister expressed profound gratitude to the Government of the Republic of South Africa for the warm welcome and excellent facilitation during their stay in Sun City. He, as well, appreciated the able manner by which the Chairperson conducted the proceedings of the meeting.

42. He reiterated the need to strengthen Africa's institution in air transport referring to AFCAC in particular as well as Africa's participation in ICAO. He also urged fellow Ministers to work together in order to ensure successful implementation of the Yamoussoukro Decision and other strategies to improve air transport in Africa. He ended by thanking the Secretariat including technical personnel and all those who contributed to the meeting's success.

***Annex:***

**Resolution on the Follow-Up of the Implementation of the Yamoussoukro Decision**

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**EX.CL/189 (VII)**  
**Annex II**

**RESOLUTION ON THE FOLLOW-UP OF THE IMPLEMENTATION OF THE  
YAMOUSSOUKRO DECISION, 1999**



We, the African Ministers Responsible for Air Transport, meeting in Sun City, South Africa, from 18 to 19 May 2005:

**Recalling** that solidarity and co-operation are the cornerstones of all action taken within the framework of the African Union;

**Noting** that the Yamoussoukro Decision Relating to the Implementation of the Yamoussoukro Declaration Concerning the Liberalisation of Access to Air Transport Markets in Africa (the Yamoussoukro Decision) entered into force on 12 August 2000 and that it takes precedence over any multilateral or bilateral agreements on air services between States Parties which are incompatible with the Decision;

**Noting further** that the Yamoussoukro Decision was to have been fully implemented by August 2002;

**Concerned** with the inordinate delay in the implementation of the Yamoussoukro Decision;

**Recognising** that some States Parties have made some progress towards the implementation of the Yamoussoukro Decision but that, however, others are still lagging behind for various reasons;

**Taking cognisance** of the need for States Parties to adopt a holistic approach to the implementation of the Yamoussoukro Decision, particularly as regards issues such as safety, security, the environment, funding and competition;

**Reaffirming** the need for the full implementation of the Yamoussoukro Decision by all States Parties;

**HEREBY APPROVE** the following plan of action to expedite and monitor the implementation of the Yamoussoukro Decision:

1. The States Parties which have implemented the Yamoussoukro Decision are or which are currently in the process of implementing the Yamoussoukro Decision are highly commended and are strongly encouraged to continue to do so.
2. The following measures should be undertaken:
  - a. The African Air Transport Executing Agency (Executing Agency) provided for in the Yamoussoukro Decision should be established under the auspices of the African Union.
  - b. The Monitoring Body established in terms of article 9.2 of the Yamoussoukro Decision shall propose to the Sub-Committee on Air Transport of the Committee on Transport, Communications and Tourism (the Sub-Committee on Air Transport) ways to further strengthen its functions and clarify the role of its members. The role of the AU and the RECs should be revisited in order to improve its efficiency. The

Monitoring Body should include the African Development Bank and the NEPAD Secretariat.

- c. The Monitoring Body shall harmonise the competition rules developed at the level of the RECs.
- d. States Parties shall, through the RECs, establish and effectively implement competition rules.
- e. The Monitoring Body shall prepare and distribute to States Parties guidelines on the criteria for evaluating compliance with the Yamoussoukro Decision. The guidelines shall address, *inter alia*, the following:
  - i. the completion of constitutional requirements for implementation, where applicable;
  - ii. the completion of national and regional institutional mechanisms to support implementation;
  - iii. the multiple designation of airlines between all city pairs in Africa;
  - iv. the harmonisation of national and/or regional air transport policies;
  - v. compliance with International Civil Aviation Organisation Standards and Recommended Practices;
  - vi. liberalization of passenger and cargo services;
  - vii. conformity with the eligibility criteria in the Yamoussoukro Decision;
  - viii. frequencies between any two States Parties;
  - ix. exchange of fifth freedom traffic rights; and
  - x. non-approval of tariffs by governments, taking into consideration applicable competition rules.
- f. The AU Commission should undertake a study to establish the challenges faced by States Parties in implementing the Yamoussoukro Decision. Based on the findings of this study, the African Union shall be requested to adopt measures for the provision of support to States experiencing difficulties in the implementation of the Yamoussoukro Decision.

**3.** States Parties shall submit to the Monitoring Body a report indicating their status of implementation of the Yamoussoukro Decision in accordance with the criteria referred to in paragraph 1 (e).

4. The report referred to in paragraph 3 shall, where applicable, include a plan of action indicating a timeframe, for the full implementation of the Yamoussoukro Decision.
5. The arbitration procedures envisaged in article 8 of the Yamoussoukro Decision should be elaborated and adopted by the Monitoring Body.
6. African States are encouraged to ratify and incorporate the Cape Town Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (2001), into their national law in order to benefit from their provisions.
7. Avenues for resource mobilization towards the implementation of the Yamoussoukro Decision should be identified and utilised. In particular, there is a need to secure funding for all activities undertaken by the RECs, the Monitoring Body and the Executing Agency. The sources of funding referred to shall, as far as possible, not include additional taxes on the aviation industry
8. The implementation of the Yamoussoukro Decision should be included in the African Peer Review Mechanism of NEPAD.
9. When a State Party considers that another State Party has not complied with the Yamoussoukro Decision, that State Party shall report such alleged non-compliance to the Monitoring Body for necessary action in accordance with rules to be developed and adopted by the Monitoring Body.
10. There should be regular follow-up meetings of the Ministers Responsible for Air Transport in Africa, at intervals not exceeding two years, to be convened by the AU Commission.

**Done and adopted at Sun City, South Africa  
on this 19<sup>th</sup> day of May 2005**

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EX.CL/189 (VII)  
Annex III

**DRAFT INTERIM GUIDELINES FOR THE NEGOTIATION OF AIR SERVICES  
AGREEMENTS BETWEEN AFRICAN UNION STATES AND  
THE EUROPEAN UNION STATES**

We, the Heads of State and Government of the Member States of the African Union (AU);

Having regard to the Constitutive Act of the African Union;

Having regard to the African Civil Aviation Commission Constitution;

Having regard to the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa signed on the 14<sup>th</sup> day of November 1999 and which entered into force on 12<sup>th</sup> August 2000;

Having regard to the Rulings of the European Court of Justice (ECJ) in November 2002 to the effect that the traditional designation clause in Air Services Agreements based on the principle of national ownership and control, discriminates among Europe Community Carriers and is contrary to Article 43 of the European Commission Treaty;

Mindful of the implications of the rulings of the European Court of Justice on Air Transport in Africa and therefore recognizing the need to develop a Common African position;

Mindful of the fact that international aviation relations between member States and European Union States have traditionally been governed by bilateral air service agreements, their annexes and other related bilateral or multilateral agreements;

Noting the recommendations of the meeting of the African Ministers responsible for Air Transport held in Sun City, South African 18-19 May 2005 calling for a common African position relating to the European Union Community clause and Negotiating mandate;

Noting the different levels of air transport development in Africa including the proposals of renegotiations sent by some member States of EU to African States and proposals on block to block negotiations sent to EU, AFCAC and the RECs in order to conclude to Air Services Agreements, it is necessary to adopt interim provisions in order to achieve a common response to the European Union Community clause and Negotiating mandate;

Recalling the efforts undertaken in the various sub-regions to consolidate, privatize and liberalize air transport services;

Considering the need to harmonize air transport policies in order to eliminate non-physical barriers that hamper the sustainable development of air transport services in Africa;

Recalling the Consolidated Conclusions and the Recommendations adopted at the 5<sup>th</sup> World Air Transport Conference held in Montreal, Canada, in March 2003;

Recognizing the need to ensure the maintenance of the existing bilateral balance and put in place adequate safeguards which will sustain effective participation of African States and carriers in International Air Transport;

Acting in accordance with the provisions of the Abuja Treaty;

HEREBY ADOPT THESE INTERIM GUIDELINES.

### **SECTION: 1 DEFINITIONS**

For the purpose of these Interim Guidelines the following expressions shall mean:

“Abuja Treaty”	The Treaty Establishing the African Economic Community adopted at Abuja, Nigeria on the 3 <sup>rd</sup> day of June 1991 and which entered into force on 12 May 1994;
“AFCAC”-	African Civil Aviation Commission;
“AFRAA”-	African Airlines Association;
“AU”-	African Union;
“AU Clause”-	African Union Clauses for inclusion in Air Service Agreements with European Union States
“Chicago Convention ”	Convention on International Civil Aviation done at Chicago, 7 December 1944.
“Common African Position”	the Interim Guidelines, AU Clauses and the recommendations adopted at the Meeting of Ministers of Air Transport at Sun City, South Africa, 18 <sup>th</sup> -19 <sup>th</sup> May 2005;
“Constitutive Act”	the Instrument establishing the African Union done at Lome, 11 <sup>th</sup> , July 2000;
“EC”	European Commission;
“ECJ Judgment”	Judgments of the Court of Justice; of the European Communities in the cases: C – 466/98, C – 467/98, C – 468/98, C – 469/98, C – 471/98, C – 472/98, C – 475/98, and C – 476/98
“EU”	European Union
“EU Clauses”	Provisions contained in the EU Regulations on

“Group”-	includes the Regional Economic Communities, Sub-Regional Group and or a number of Member States;
“IATA ”	International Air Transport Association;
“ICAO”	the International Civil Aviation Organization;
“Interim Guidelines”	This Interim Guidelines and any annex therein
“Member States ”	State Parties to the Yamoussoukro Decision and such other African Countries which though not a party to the Abuja Treaty or the Yamoussoukro Decision, has declared in writing its intention to be bound by this Guideline;
“RECs”	The Regional Economic Communities of Africa.

## **SECTION 2: Scope of Application**

- 2.1. These guidelines establish the modalities for negotiating bilateral air services agreements between Member States and EU States in respect of provisions relating to designation, authorization, suspension and revocation.
- 2.2. These guidelines shall have precedence over any bilateral and multilateral Air Services Agreements between Member States and the EU States.

## **SECTION 3: OBJECTIVES**

- 3.1. Member States shall ensure that all existing bilateral or multilateral agreements with EU States that do not conform to the common African position and provisions of the Yamoussoukro Decision shall be amended or replaced by new agreements that are wholly compatible to the African position.
- 3.2. Member States shall ensure that in conducting negotiating that the defense and promotion of the common interest of African countries and carriers shall be the basis for such co-operation in external relations.

## **SECTION 4: NEGOTIATIONS**

- 4.1. A Member State may enter into negotiations with an EU State in respect of a new Air Services Agreement or the modification of an existing air services agreement, provided that:
  - a) the conditions and requirements contained in this Interim Guidelines and the AU Clauses annexed to this Guidelines as Appendix1 is included in such negotiations; and

- b) the notification procedure contained in Section 5 herein is complied with
- 4.2. A Member State may invite the AU and/ or such Regional Economic Communities it may require, to participate as an observer in such negotiations;
- 4.3. If Member States wish to negotiate as a group a bilateral Air Services Agreement with the EU and/or an EU State, they shall in their negotiations implement the Guidelines and the AU Clauses.
- 4.4. Member States shall encourage, facilitate and allow co-operative and commercial arrangements such as blocked-space, code sharing franchising or wet leasing between and among African carriers. They shall endeavour to create a conducive environment that will facilitate such cooperation;
- 4.5. Member States shall not grant operating licenses or permit commercial arrangements which have the intention of creating virtual airlines that act as vehicles for foreign airlines to access African markets for which they have no underlying traffic rights.
- 4.6. Member States, in their bilateral agreements with the EU States, shall ensure that the rights and obligations of the licensing EU State as well as the designating State under the bilateral agreement are clearly defined.

#### **SECTION 5: NOTIFICATION**

- 5.1. Where a Member State intends to enter into a bilateral air service agreement with the EU and/or an individual EU State, it shall notify the appropriate Regional Economic Community, AFCAC and AU of its intentions in writing.
- 5.2. The information shall be transmitted at least one calendar month before formal negotiations are scheduled to commence with the EU/or an EU State. If, due to exceptional circumstances formal negotiations are scheduled at less than one month's notice, the Member State shall transmit the information as soon as possible.
- 5.3. If, within 15 working days of receipt of the notification referred to in Section 5 the AU, AFCAC and the relevant Regional Economic Community conclude that the negotiations are likely to undermine the common African position, it shall inform the Member State who shall act accordingly.
- 5.4. The AU, AFCAC and relevant Regional Economic Community may make other comments to the Member State which has notified its intention to enter into negotiations in accordance with Section 8 The Member State shall take such comments into account as far as possible in the course of negotiations.



## **SECTION 6: CONCLUSION OF AGREEMENTS**

- 6.1. Upon signature of an agreement, the Member State concerned shall notify the AU, AFCAC and the relevant Regional Economic Community of the outcome of the negotiations together with any relevant documentation.
- 6.2. Where the negotiations have resulted in an agreement, which does not incorporate the AU clauses adopted in these guidelines, the relevant provisions of the Abuja Treaty shall apply to that Member State.

## **SECTION 7: CONFIDENTIALITY**

In notifying the AU, AFCAC or relevant Regional Economic Community of negotiations and their outcomes as envisaged in Articles 5 and 6, Member States shall clearly inform the AU, AFCAC or relevant Regional Economic Community if any information therein is to be considered confidential and whether it can be shared with other Member States.

## **SECTION 8: DISTRIBUTION SYSTEM**

The ICAO code of conduct shall be the basis for the regulation of distribution systems

## **SECTION 9: ENVIRONMENTAL PROTECTION**

- 9.1 Member States shall cooperate, support and work closely with international organizations for the protection of the environment while resisting unilateral measures that have adverse economic impact on Member States.
- 9.2 Member States should support ICAO as the appropriate global forum for developing environmental standards and recommended practices for addressing environmental issues.

## **SECTION 10: GROUND HANDLING**

Infrastructural constraints and scales of operation may impose impediments on the ability of Member States to liberalize ground handling arrangements. Bilateral agreements should be flexible to accommodate special measures to meet the interest and needs of Member States.

## **SECTION 11: COMPETITION RULES**

- 11.1. Member States shall support a policy, which encourages fair and regulated competition that enhances co-operation.

- 11.2. Member States shall support the development of internationally agreed rules and principles while resisting the extra-territorial applicability to national or internal competition rules that may have adverse effects on African airlines.
- 11.3. Where such national competition rules apply, appropriate immunity and exemption should be sought to permit African Airlines to engage in cooperative arrangements including tariff coordination and other joint activities.

## **SECTION 12: DESIGNATION AND AUTHORIZATION**

- 12.1. The acceptance of the EU Community clause shall not extend to a carrier that is “substantially owned and effectively controlled” by an EU State that has no bilateral air service agreement with the concerned Member State even if such carrier is established in the designating State.
- 12.2. Effective regulatory control shall be maintained by the EU State responsible for issuing the operating license.

## **SECTION 13: TRAFFIC RIGHTS**

- 13.1. An EU carrier shall not operate to a Member State from more than one EU State.
- 13.2. EU States shall give an assurance that the acceptance of the EU designation clause shall not directly or indirectly affect the agreed frequency, capacity, fare structure or number of designated airlines.
- 13.3. Any unutilized traffic rights shall only be utilized by any other EU airline subject to a commercial arrangement with the designated African airlines or Member States.
- 13.4. Member States may where appropriate and on a non-reciprocal basis, will request for the granting of fifth and seventh freedoms on intra-European routes.

## **SECTION 14: TARIFFS**

Member States shall support the maintenance of the existing IATA interlining system which enhances co-operation amongst airlines.

## **SECTION 15: SAFETY**

- 15.1. Member States shall ensure in their relations with the EU and/or an EU State that the State that is responsible for Safety and Security is clearly identified and shall obtain the necessary assurances from the designating State and

the licensing State on their obligations to comply with the provisions of the Chicago Convention and its Annexes.

- 15.2. Where an EU Country exercise the right to inspect an aircraft operating to an EU destination under the laws of the EU or an EU State, Member States shall have a reciprocal right to inspect and take appropriate measures to ensure compliance with Safety Standards of the concerned Member State.

#### **SECTION 16: SECURITY**

- 16.1. Member States shall ensure in their relations with the EU and/or an EU State that the State that is responsible for Security is clearly identified and shall obtain the necessary assurances from the designating State and the licensing State on their obligations to comply with the provisions of the Chicago Convention and its Annexes.
- 16.2. Where an EU Country exercise the right to inspect an aircraft operating to an EU destination under the laws of the EU or an EU State, Member States shall have a reciprocal right to inspect and take appropriate measures to ensure compliance with Security Standards of the concerned Member State.

#### **SECTION 17: SETTLEMENT OF DISPUTES**

- 17.1. Member States shall ensure that a dispute settlement mechanism is adequately provided for in the Bilateral Air Services Agreements.
- 17.2. The dispute settlement mechanism shall specify modalities for settling disputes between the Member State and the designating State and or the licensing State settlement mechanism is adequately provided for.

#### **SECTION 18: AUTHORITY AND STRUCTURE**

- 18.1. The Regional Economic Groups shall ensure adherence to the conditions and guidelines of the common African position by their Member States. They shall ensure uniformity and consistency in the regional level.
- 18.2. The AU shall be responsible for the continent-wide adherence and implementation of the Common African position. It shall ensure uniformity and consistency in the adherence of the Interim Guidelines within the Regional Economic Communities and the Member States.
- 18.3. The AU shall establish a committee of experts consisting of experts from AFCAC, AFRAA and the Regional Economic Communities, to assist and advise it in the area of air transport relations with third countries. The committee of Experts shall hold exploratory discussions with the EU and where necessary an individual member State and advise the AU on the outcome of such discussions and its recommendations on appropriate action.

The AU shall establish the duties, responsibilities, procedures and funding for the working for the committee.

### **SECTION: 19**

The Regional Economic Communities shall cooperate and coordinate with the AU, AFCAC and AFRAA and the regional Economic Communities in other to achieve harmonized and uniform application of the Common Africa Position.

### **SECTION 20: REVIEW OF THE GUIDELINES AND AU CLAUSES**

These Guidelines and the AU Clauses may be reviewed in line with the changing trends in air transportation.

### **SECTION 21: ENTRY INTO FORCE**

In accordance with Article 10 of the Abuja Treaty, these Guidelines shall automatically enter into force thirty (30) days after the date of its signature by the chairman of the Assembly of Heads of State and Government at which these Guidelines were adopted.

In respect of African States that are not parties to the Abuja Treaty, these Guidelines shall enter into force 30 days after the date on which such States has communicated their declaration of, intention to be bound by these Guidelines in writing to the AU, which shall in turn transmit the declaration to Member States

Done in \_\_\_\_\_ this \_\_\_\_\_ Day of \_\_\_\_\_ 2005

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EX.CL/189(VII)

Annex IV

**DRAFT AU CLAUSES FOR INCLUSION IN AIR SERVICE AGREEMENTS**  
**WITH EUROPEAN UNION MEMBER STATES**

## Definitions

*For the purpose of this Agreement, unless Otherwise stated:*

1. **“Decision”** means the Decision Relating to the Implementation of the Yamoussoukro Declaration concerning the Liberalization of Access to Air Transport Markets in Africa signed on 14<sup>th</sup> day of November 1999 and adopted on 11<sup>th</sup> July 2000 by the Assembly of Heads of States of the African Union/African Economic Community.
2. **“State Party”** means African State signatory to the Abuja Treaty and such other African country which, though not party to the said Treaty, has declared in writing its intention to be bound by the Decision.

## Designation and Authorization

1. *On the receipt of a designation by one Contracting Party made in accordance with the provisions of [paragraph 1] of the present Article and on application from the designated airlines in the form and manner prescribed by the aeronautical authorities of the other contracting party shall grant, with minimum delay the appropriate operating Authorization, provided:*

- (a) In the case of an airline designated by [African State]
  - i. the airline is legally established in a territory of a State Party in accordance with the regulations applicable in that State;
  - ii. have its headquarters, central administration and principal place of business physically located in the State Party concerned; and
  - iii. the airline meets other Eligibility Criteria set forth in Article 6.9 of the Decision.
- (b) In the case of airline designated by the (EU Country):
  - i. it is established in the territory of the (EU Country) under the Treaty establishing the European Community and has a valid Operating License in accordance with European Community law;
  - ii. effective regulatory control of the airline is exercised and maintained by the European Community Member State responsible for issuing its Air Operator's Certificate and the relevant Aeronautical Authority is clearly identified in the designation; and
  - iii. the airline is owned directly or through majority ownership by the European Community member States and/or nationals of European Community Member States , and is effectively controlled by such States and/or such national.

### ***Revocation or Suspension of Authorization***

1. *Each Contracting Party shall have the right to revoke an operating authorization, suspend the exercise of the rights granted in the present Agreement to an airline designated by the other Contracting Party, or impose such conditions on the exercise of these rights as it may deem necessary where:*

(a) In the case of an airline designated by [African State]:

- i. the airline is not established in the territory of a State Party; or
- ii. does not have its headquarters, central administration and principal place of business physically located in the State Party concerned; or
- iii. has failed to meet the eligibility criteria set forth in Article 6.9 of the Decision.

(b) In the case of airline designated by the (EU State):

- i. the airline is not established in the territory of the (EU State) under the Treaty establishing the European Community and has not a valid Operating License in accordance with European Community law;
- ii. effective regulatory control of the airline is not exercised or not maintained by the European Union State responsible for issuing its Air Operator's Certificate, or the relevant Aeronautical Authority is not clearly identified in the designation; or
- iii. the airline is not owned directly or through majority ownership by the European Union States and/or nationals of European Community Member States, or is not at all times effectively controlled by such states and or such nationals.

### **Aviation Safety**

1. Where [EU State] has designated an airline whose regulatory control is exercised and maintained by another member State of the European Union, the rights of the [African State] under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that member State of the European Union and in respect of the operating authorization of that airline.
2. Where [African State] has designated an airline whose regulatory control is exercised and maintained by another State Party, the rights of the [EU State] under this Article shall apply equally in respect of the adoption, exercise or maintenance of safety standards by that State Party and in respect of the operating authorization of that airline.

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